MICHIGAN COURT OF APPEALS

CMS Energy Corp. v. Department of Treasury

CMS Energy · No. 374696 · Decided February 17, 2026

SUMMARY

The Michigan Court of Appeals affirmed the Tax Tribunal's grant of summary disposition to the Michigan Department of Treasury and denial of CMS Energy Corporation's refund request for tax years 2013 through 2016. The court held that CMS Energy's wholesale electricity sales were properly sourced to Michigan because the contractual points of delivery to MISO were located in Michigan and MISO qualified as the purchaser. The court also rejected CMS Energy's Commerce Clause challenge, concluding that Michigan's apportionment methodology satisfied internal and external consistency requirements.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	Michael F. Gadola, C.J.; Mark T. Boonstra, J.; Sima G. Patel, J.
JURISDICTION	Michigan Court of Appeals
DECIDED	February 17, 2026
DOCKET	374696
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed as of right from the Michigan Tax Tribunal's order granting respondent summary disposition under MCR 2.116(C)(10) and denying petitioner's request for partial refunds of Michigan corporate income taxes for tax years 2013 through 2016.
STANDARD OF REVIEW	The court reviews Tax Tribunal decisions for misapplication of the law or adoption of a wrong principle when fraud is not claimed, and reviews statutory interpretation, constitutional issues, and summary disposition rulings de novo. Summary disposition under MCR 2.116(C)(10) is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	unpublished
PARTIES	CMS Energy Corp. v. Department of Treasury

TOPICS

state and local tax · tax · statutory interpretation · commerce clause · appellate procedure

PRACTICE AREAS

state and local taxation · corporate income tax · appellate procedure · constitutional law

QUESTIONS PRESENTED

1. Whether CMS Energy's wholesale electricity sales through MISO were properly sourced to Michigan under MCL 206.665(1)(a).
2. Whether the transactions with MISO constituted sales to a purchaser in Michigan under MCL 206.609(4) and MCL 206.665(1)(a).
3. Whether Michigan's sourcing of all of CMS Energy's wholesale electricity sales to Michigan violated the Commerce Clause.
4. Whether summary disposition was proper when the material facts concerning the contractual counterparty, title transfer, and delivery points were undisputed.

HOLDINGS

1. Wholesale electricity sales are properly sourced to Michigan under MCL 206.665(1)(a) when the contract requires delivery to a purchaser in Michigan and the electricity comes to rest at contractual delivery points in Michigan. The relevant purchaser was MISO, not unidentified downstream market participants.
2. MISO qualified as 'any purchaser' under MCL 206.665(1)(a), and CMS Energy's transactions with MISO constituted sales because title transferred to MISO and CMS Energy received consideration from MISO. The statute does not require inquiry into the ultimate source of the funds used to pay the taxpayer.
3. Michigan's sourcing of CMS Energy's wholesale electricity sales did not violate the Commerce Clause because the apportionment methodology satisfied the requirements of substantial nexus, fair apportionment, nondiscrimination, and fair relation to state-provided services. CMS Energy failed to show double taxation, an attribution out of all appropriate proportion to Michigan activity, or a grossly distorted result.

KEY QUOTATIONS

> *"The inquiry focuses on the ultimate destination that the property comes to rest, regardless of any free-on-board point or other conditions of sale."* (at 2)

> *"It is petitioner's receipt of consideration that is pertinent under the statutory definition of "sale.""* (at 3)

> *"Petitioner fails to recognize that the delivery of electricity to MISO in exchange for consideration is the sale itself."* (at 5)

> *"A party challenging the proportionality of a tax "has a heavy burden of showing by clear and cogent evidence that the apportionment formula attributed income out of all appropriate proportion to the business*

> *activity in Michigan or that it led to a grossly distorted result.""* (at 7)

FACTUAL BACKGROUND

CMS Energy generated electricity in Michigan and sold it wholesale through MISO, which served as the contractual counterparty under a federally regulated tariff. CMS Energy's Generator Interconnection Agreements required it to deliver electricity to MISO at substations or interconnection points located in Michigan, and title to the electricity transferred to MISO in exchange for consideration. After paying Michigan corporate income tax for 2013 through 2016, CMS Energy sought partial refunds, contending that sales should be sourced to the locations where electricity was ultimately used or resold rather than to Michigan.

PROCEDURAL HISTORY

CMS Energy sought amended returns and partial refunds, arguing that some wholesale electricity sales should not be sourced to Michigan. The Department of Treasury denied the request, and the Tax Tribunal granted the Department summary disposition and denied the refund request. The Michigan Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Briggs Tax Serv, LLC v Detroit Pub Sch, 485 Mich 69, 75; 780 NW2d 753 (2010)
- Four Zero One Assoc, LLC v Dep't of Treasury, 320 Mich App 587, 592; 907 NW2d 892 (2017)
- El-Khalil v Oakwood Healthcare, Inc, 504 Mich 152, 160; 934 NW2d 665 (2019)
- PM One, Ltd v Dep't of Treasury, 240 Mich App 255, 257-267; 611 NW2d 318 (2000)
- Uniloy Milacron USA, Inc v Dep't of Treasury, 296 Mich App 93, 94-99; 815 NW2d 811 (2012)
- Prince v MacDonald, 237 Mich App 186, 197; 602 NW2d 834 (1999)
- Kinder Morgan Mich, LLC v City of Jackson, 277 Mich App 159, 174; 744 NW2d 184 (2007)
- LeFever v Matthews, 336 Mich App 651, 670 n 3; 971 NW2d 672 (2021)
- Seifeddine v Jaber, 327 Mich App 514, 519-520; 934 NW2d 64 (2019)
- Hecht v Nat'l Heritage Academies, Inc, 499 Mich 586, 621 n 62; 886 NW2d 135 (2016)
- Johnson v Johnson, 329 Mich App 110, 124 n 8; 940 NW2d 807 (2019)
- Powerex Corp v Dep't of Revenue, 357 Or 40, 43-54; 346 P3d 476 (2015)
- Lockheed Martin Corp v Hegar, 601 SW3d 769, 770-779 (Tex, 2020)
- Sidun v Wayne Co Treasurer, 481 Mich 503, 508; 751 NW2d 453 (2008)
- Exxon Corp v Wisconsin Dep't of Revenue, 447 US 207, 219; 100 S Ct 2109; 65 L Ed 2d 66 (1980)
- Amerada Hess Corp v Dir, Div of Taxation, New Jersey Dep't of Treasury, 490 US 66, 72; 109 S Ct 1617; 104 L Ed 2d 58 (1989)
- Vectren Infrastructure Servs Corp v Dep't of Treasury, 512 Mich 594, 629, 642-643; 999 NW2d 748 (2023)
- Container Corp of America v Franchise Tax Bd, 463 US 159, 169-170; 103 S Ct 2933; 77 L Ed 2d 545 (1983)